## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Phillip Steele, : Civil Action No.: \_1:16-cv-1229

Plaintiff,

v.

Wells Fargo Bank, N.A., : COMPLAINT

: JURY TRIAL DEMANDED

Defendant.

For this Complaint, the Plaintiff, Phillip Steele, by undersigned counsel, states as follows:

### **JURISDICTION**

- 1. This action arises out of repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et. seq. ("TCPA").
- 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

#### **PARTIES**

- 3. The Plaintiff, Phillip Steele ("Plaintiff"), is an adult individual residing in Graham, North Carolina, and is a "person" as defined by 47 U.S.C. § 153(39).
- 4. Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), is a business entity located in Sioux Falls, South Dakota, and is a "person" as defined by 47 U.S.C. § 153(39).

## **ALLEGATIONS APPLICABLE TO ALL COUNTS**

5. Within the last year, Wells Fargo began calling Plaintiff's cellular telephone, number 336-XXX-1032.

- 6. Wells Fargo called Plaintiff from telephone number 877-647-8551, using an automatic telephone dialing system ("ATDS").
- 7. When Plaintiff answered calls from Wells Fargo he experienced a brief period of silence before being connected to a live representative.
- 8. On or about May 12, 2016, Plaintiff spoke with a representative and requested that Wells Fargo cease calling.
- 9. Despite Plaintiff's request, Wells Fargo continued to place numerous ATDS calls to Plaintiff's cellular telephone, through and including August, 2016.
- 10. Plaintiff was annoyed, harassed and inconvenienced by Defendant's continued calls.

#### **COUNT I**

# VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.

- 11. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 12. At all times mentioned herein and within the last four years, Defendant called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS" or "Predictive Dialer") and a prerecorded or artificial voice.
- 13. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as "a dialing system that automatically dials consumers' telephone numbers in a manner that "predicts" the time when a consumer will answer the phone and a [representative] will be available to take the call…"2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not "free to take a call that

has been placed by a predictive dialer, the consumer answers the phone only to hear 'dead air' or a dial tone, causing frustration." *Id.* In addition, the TCPA places prohibitions on companies that "abandon" calls by setting "the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned." *Id.* 

- 14. Defendant's telephone systems have some earmarks of a Predictive Dialer. When Plaintiff answered the phone, he was met with a period of silence before Defendant's telephone system would connect him to the next available representative.
- 15. Upon information and belief, Defendant's Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.
- 16. Despite being directed to cease all calls, Defendant continued to place automatic telephone calls to Plaintiff's cellular telephone. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).
- 17. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
- 18. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 19. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
- 20. Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each call made in knowing and/or willful violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

- 1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- 2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
- 3. Such other and further relief as may be just and proper.

#### TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: October 17, 2016

Respectfully submitted,

By: /s/ Ruth M. Allen

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